

Internal Revenue Service  
**memorandum**

CC:IL:BF2  
LKSaveikis

date: AUG 4 1989

to: District Counsel, Thousand Oaks  
Attn: Gilbert T. Gembacz

CC:TO

from: Assistant Chief Counsel (Tax Litigation)

CC:TL

subject: [REDACTED]

This is in reply to the memorandum of May 16, 1989, requesting advice concerning the above-named case.

ISSUE

Whether the petitioner may reapply for exemption from self-employment tax and have the reapplication treated as timely filed under the provisions of the settlement agreement entered in [REDACTED]  
[REDACTED]

CONCLUSION

Petitioner may reapply for exemption and have the reapplication treated as timely filed. We have enlisted the aid of the Director of the Returns Processing and Accounting Division to have the Fresno Service Center approve the application.

FACTS

The petitioner was issued ministerial credentials by the [REDACTED]  
[REDACTED] in [REDACTED]. He timely applied for exemption from self-employment tax under I.R.C. § 1402(e) in [REDACTED] while he was serving as a minister of [REDACTED]. [REDACTED] had been recognized as an exempt organization; however, its exemption was revoked in [REDACTED]. The revocation issue was litigated and finally resulted in a judgment in favor of the Commissioner in [REDACTED]  
[REDACTED]

Petitioner's application was not acted upon by the Fresno Service Center until [REDACTED]. At that time it was disapproved. The basis for disapproval was that petitioner had failed to establish that his ordaining church was an exempt organization. During the [REDACTED] years that petitioner's application was pending, [REDACTED] was transferred to the [REDACTED], an

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organization recognized as exempt as of [REDACTED]. On [REDACTED], petitioner reapplied for exemption.

The [REDACTED] settlement agreement provides in relevant part that [REDACTED] ministers whose applications for exemption from self-employment tax were timely filed in accordance with the provisions of section 1402(e), and which were denied solely because their ordaining church had not received a letter from the Service recognizing their exempt status under sections 501(c)(3) and 170(b)(1)(A)(i), may timely reapply for exemption. The minister must demonstrate that he/she qualified for the exemption at the time of the original application. The reapplication will be deemed timely filed if the initial application was timely filed and if the reapplication is filed within one year of the effective date of the settlement agreement. Exemptions granted under the settlement agreement will be deemed retroactive and applicable to each preceding year in which the applicant minister meets all requirements of section 1402(e).

The settlement agreement further provides that all [REDACTED] ministers' applications will be processed and determined by the Service with all due expediency.

#### DISCUSSION

Petitioner seems generally to fall within the group of ministers sought to be protected under the [REDACTED] settlement agreement, although he does not satisfy the specific terms of that agreement. His timely application was disapproved because he failed to establish that his ordaining church was an exempt organization. He should therefore have been allowed the opportunity to reapply within one year of the settlement agreement and have his application treated as timely. However, he did not receive the Service's disapproval of his original application until almost [REDACTED] years after the settlement agreement became effective.

While petitioner's reapplication was not received within the one-year period specified in the [REDACTED] settlement, the reason for his delay in reapplying was a direct result of the Service Center's inability to process his original application in a timely manner. The equities favor allowing petitioner the opportunity to reapply for exemption.

The reapplication will be considered under [REDACTED] if petitioner can demonstrate that he qualified for the exemption at the time of the original application. Because [REDACTED]'s exemption had been revoked at the time of the original application, petitioner technically is not entitled to exemption at this time. However, the issue was being litigated at the time of the original application and was not final in that sense. In addition, the settlement agreement provides for retroactivity applicable to preceding years in which the applicant minister met the requirements of section

1402(e). Petitioner here became a minister of an exempt organization when [REDACTED] was transferred to [REDACTED].

In your memorandum, you recommended as a means of settlement that the exemption under section 1402(e) be recognized from the date in [REDACTED] that [REDACTED] joined [REDACTED]. We agree that your settlement recommendation proposes a reasonable compromise based on the facts and equitable considerations. Further, with respect to the section 501(c)(3) and section 170(b)(1)(A) issues, we prefer not to litigate these issues in an "S" case.

Attached is our memorandum of this date asking that the Fresno Service Center be instructed to approve the application for exemption in accordance with your settlement proposal.

MARLENE GROSS

By:

David C. Fegan  
DAVID C. FEGAN  
Acting Senior Technician Reviewer  
Branch No. 2  
Tax Litigation Division

Attachments: Memo to Returns Processing and Accounting Division  
Copy of Form 4361